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ACORN )  
(Association of Community Organizations )  
for Reform Now) )

Complaint regarding Service Termination By )  
People's Gas Light and Coke Company )

Docket No. 01-0317

**COMPLAINANT'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS**

NOW COMES COMPLAINANT, The Association of Community Organizations for Reform Now ("ACORN", "Complainant", or "Illinois ACORN"), pursuant to 83 Ill.Adm.Code § 200.190 and hereby moves this honorable Illinois Commerce Commission ("ICC" or "Commission") to enter an order which denies the Peoples Gas Light and Coke Company's ("Respondent", "Peoples Gas") Motion to Dismiss in the above captioned cause. The Respondent's Motion fails to state adequate grounds for dismissal for either procedural or substantive reasons. Filed in conjunction with this Response is a motion by Complainant for leave to amend ACORN's complaint under 83 Ill.Code.Adm. §200.140. This second Amended Complaint corrects and clarifies specific sections in light of the Respondent's Motion to Dismiss.

The Respondent's motion fails to present a procedural flaw that should be considered fatal to this cause of action. Under Illinois law, pleadings are "to be liberally construed with a view to doing substantial justice between the parties" and parties are allowed to amend their pleadings "liberally." *First National Bank v. City of Aurora*, 71 Ill.2d 1, 15 Ill.Dec. 642, 373 N.E.2d 1326 (Ill.1978).; Michael Kaufman, ILLINOIS PRACTICE: Illinois Civil Trial Procedure, Vol. 9 (St. Paul, MN: West Publishing Co.,

1996), p. 90. This response addresses each procedural flaw identified in the Respondent's motion in turn. First, ACORN does possess a certificate of authority to operate in Illinois and a second Amended Complaint has been submitted in conjunction with this response to reflect that fact. ACORN's certificate of authority showing its good standing with the state of Illinois is attached as Appendix A. Second, ACORN's verification of its first Amended Complaint, though inaccurate, was not untruthful. Attached to this response as Appendix B is an affidavit given by Madeline Talbott, ACORN's Head Organizer. Third, the fact that ACORN never filed an informal complaint with the Commission should not be held as adequate grounds for dismissing the entire action. Fourth, ACORN is not requesting class relief and has submitted a second Amended Complaint to clarify the relief requested. Fifth, ACORN can under Illinois law represent its organizational members before the ICC and has submitted a second Amended Complaint in conjunction with this motion to clarify this issue.

Substantively, in order to succeed on a motion to dismiss, the Respondent must show that even when viewing the facts presented in ACORN's first Amended Complaint as true, there would be no violation of ICC rules or the Public Utilities Act. *Mt. Zion State Bank & Trust v. Consolidated Communications, Inc.* 660 N.W.2d 863 (Ill. 1995).; *Ziemba v. Mierzuna*, 566 N.E. 2d 1365 (Ill. 1991). ACORN presents very clear facts in its first Amended Complaint that, if proven to be true, constitute a violation of the Public Utilities Act and ICC rules by Peoples Gas. Second, the remedy requested by ACORN is within the scope of the Public Utilities Act and has been amended to provide more clarity in the second Amended Complaint submitted in conjunction with this motion.

I. ACORN'S AMENDED COMPLAINT SHOULD NOT BE DISMISSED  
BECAUSE THE CLAIMED PROCEDURAL DEFICIENCIES DO NOT EXIST,  
CAN BE CORRECTED, OR DO NOT WARRANT DISMISSAL OF THE  
ACTION

A. ACORN is a Non-Profit Corporation in Good Standing in the State of Illinois

In its Motion to Dismiss, Respondent argues that Madeline Talbott, Head Organizer of Illinois ACORN, falsely verified that ACORN was a non-profit corporation in good standing in the state of IL. Motion to Dismiss, p.2. However, Ms. Talbott was unaware that ACORN's status with the state of Illinois had been revoked when she verified the complaints that were filed with the Illinois Commerce Commission on April 11, 2001 and May 14, 2001. *See*: Talbott's Affidavit, Appendix B. Ms. Talbott had received reassurance in the fall of 2000 from ACORN's corporate legal service, Citizens Consulting Incorporated ("CCI"), that any issues surrounding ACORN's corporate standing with the state of Illinois had been resolved. *See*: Id.

Ms. Talbott took CCI at their word that they had resolved the issue. When she was informed on May 14<sup>th</sup>, 2001, that ACORN's corporate status had been revoked by the state of Illinois, she moved quickly to address the problem.

ACORN has attached the original copy of the certificate of good standing from the IL Secretary of State's office as Appendix A to this Response and also submits, in conjunction with this Response, an amended complaint, pursuant to 83 Ill. Adm. Code §220.140, that also contains a copy of this certificate of good standing. As a Not for Profit registered to do business in the state of Illinois, ACORN thus has standing to bring this complaint before the ICC.

B. ACORN's Verification of Its Complaint, Though Inaccurate, was Not Untruthful.

In its Motion to Dismiss, Respondent claims that ACORN's verification is not truthful because Head Organizer Madeline Talbott "knew or should have known" before Illinois ACORN filed its complaint that its certificate to do business in the state of Illinois had been revoked. Motion to Dismiss, p. 3. Respondent further claims that as a result of this inaccurate verification that further statements verified by Ms. Talbott cannot be relied upon. Id. However, when Ms. Talbott signed the complaints filed by ACORN, she did believe and had good reason to believe "to the best of her knowledge, information and belief" that ACORN was still in good standing with the state of Illinois. ACORN Complaint Verification.

As detailed in the affidavit attached to this motion as Appendix A, Ms. Talbott took action in the fall of 2000 to ensure that ACORN would remain in good standing with the state of Illinois by contacting CCI, the company that does ACORN's corporate legal work. She received numerous assurances from CCI throughout the fall of 2000 that ACORN's corporate status was up to date. After contacting CCI in the Fall of 2000 and obtaining their repeated assurances, she did not receive any more notices from the state indicating any problems with ACORN's status. When she found out on May 14, 2001, that CCI had failed to follow through, she took immediate action to ensure that ACORN regained its good standing with the state. On every front, Ms. Talbott acted diligently to attempt to ensure that ACORN would be in good standing with the state when this complaint was filed and had no reason to believe otherwise. Therefore, Ms. Talbott's verification was not untruthful.

The Commission has no other reason to question Ms. Talbott's veracity. She is an experienced community organizer who has worked tirelessly with and on behalf of poor and working people for 18 years producing reforms and changes in the public interest. The Commission should have confidence in, not questions about her veracity. The complaint should not be dismissed for this reason.

C. ACORN's Formal Complaint Should Not be Dismissed For Failing to File an Informal Complaint

Prior to filing this formal complaint, ACORN did not file an informal complaint with the Illinois Commerce Commission. Illinois Commerce Commission rules, as pointed out by the Respondent, provide for the filing of an informal complaint first. See: Motion to Dismiss, p.3, 83 Ill.Adm.Code 280.170. However, this procedural deficiency should not be deemed sufficient to dismiss this action.

Dismissal of an entire action for failure to file an informal complaint is a procedural deficiency similar to a dismissal for want of prosecution (e.g. failure to make discovery, failure to make an appearance). In such dismissals, courts look to whether the party, which has failed to take the necessary procedural step, acted in a deliberate and willful disregard of the court's authority or procedures. See: *McNeil v. Brewer*, 242 Ill.App.3d 463, 610 N.E.2d 778 (Ill.1993); *Dienthal v. Branovacki*, 23 Ill.App.3d 726, 320 NE2d 177 (Ill.1994). In addition, the court will look at policy factors, such as the goal of avoiding delay and notions of fundamental fairness. *People v. Countryman*, 162 Ill.App. 3d 134, 514 NE2d 1038 (1987). Above all, dismissal for want of prosecution is generally considered a drastic action. *Brewer*, 242 Ill.App.3d 463, 610 N.E.2d 778 (1993); *Branovacki*, 23 Ill.App.3d 726, 320 N.E.2d 177 (1994).

When ACORN first began to explore the option of filing a complaint with the ICC, ACORN Researcher Doug Timmer contacted the ICC about his options. He was told that he could write a letter to the ICC detailing ACORN's complaint. *See:* Attached Affidavit by Doug Timmer, ACORN Researcher in Appendix C. However, no one informed him that he had to write an informal letter and allow the Commission to investigate before filing a formal complaint. As a result, he proceeded to file a formal complaint. ACORN did not take this action in order to thumb its nose at the Commission, but because it seemed to be the best way to try to get immediate action on a very pressing issue that had been negotiated for months, but still was not resolved.

The Respondent argues that ACORN should have filed an informal complaint in order to allow the Commission to resolve the problem outside of formal action. Motion to Dismiss, p. 4-5. However, informal and formal negotiations and activity had been ongoing between People's Gas and ACORN for some time. Since the filing of a formal complaint, informal negotiations and contact between ACORN and People's Gas have continued. People's Gas has had every opportunity over the past three months to resolve issues surrounding this complaint informally with ACORN and has failed to do so. It is the Respondent's lack of action in following through on its public commitment to create the arrearage program and to help consumers take action to avoid shut-offs that has necessitated formal action in this arena.

This complaint involves significant issues of concern to both ACORN members and the public at large. The magnitude of these concerns is supported by the fact that the State's Attorney's office has intervened in this affair. People's Gas has not been prejudiced in any way by the lack of the filing of an informal complaint nor has undue

delay occurred because of the failure to take this step. The substantive issues in this complaint are serious and require examination; a dismissal for this procedural deficiency is not warranted.

D. ACORN's Complaint Should Not Be Dismissed As a Class Action.

Respondent argues in his motion to dismiss that ACORN's complaint constitutes a class action, which the Commission lacks the authority to address. 83 Ill. Adm. Code § 200.95; Motion to Dismiss, p.5. However, ACORN desires to come before the Commission as a community organization representing its members, many of whom have suffered harm as residential gas customers as a result of the Respondent's actions regarding service terminations and the creation of a payment assistance plan. ACORN has thus filed a motion for leave to amend its complaint and has submitted an amended complaint which request a remedy on behalf of its members. Attached to this second Amended Complaint are a number of affidavits detailing how individual ACORN members have been affected by the actions of People's Gas that are the focus of the Amended Complaint. Thus, ACORN does not request class relief; it requests relief on behalf of its individual members who have been harmed by the actions of People's Gas in failing to state clearly what must be done to avoid a gas shut-off and in failing to set up a payment assistance plan after publicly promising to do so.

E. ACORN Represents Its Members in This Action and Has Standing Under Illinois Law to Do So

The Illinois courts have clearly ruled that organizations can represent their members before the ICC, even if they themselves as organizations have not suffered any damage. *See: Illinois Telephone Association v. Illinois Commerce Commission*, 67 Ill.2d 15, 364

N.E.2d 63, 7 Ill.Dec. 76 (1977); *Cable Television and Communications Association of Illinois v. Ameritech Corporation*, 288 Ill.App.3d 354, 680 N.E.2d 445, 223 Ill.Dec. 712 (Ill.App. 2<sup>nd</sup> Dist. 1997). Both cases cited above stand for the proposition that an association, in a representative capacity, may properly bring a case before the ICC on behalf of its members. Therefore, the Respondent's example of ACORN needing to be a customer of People's Gas in order to bring a complaint, is incorrect. Motion to Dismiss, p.6. ACORN can bring a complaint on behalf of its members. Like a business organization bringing forth a complaint on behalf of its industry members, ACORN is bringing forth a complaint on behalf of its citizen members. ACORN has filed a motion for leave to amend its complaint and a second Amended Complaint to clarify this issue.

- II. ACORN's Complaint Should Not Be Dismissed Because the Facts Alleged in ACORN's Complaint, If Proven to Be True, Constitute Violations of the Public Utilities Act and the Rules of the ICC
- A. ACORN's Complaint Presents Serious Substantive Violations of the Public Utilities Act and the Illinois Commerce Commissions rules.

Respondent claims that it has complied with the requirements of 83 Ill.Adm.Code 280.110(e) by sending out a notice as an insert "enclosed with each notice of disconnection sent to a residential gas or electric customer." Motion to Dismiss, pp. 6-7. However, 220 ILCS 5/8-101 requires that public utilities act in a "just and reasonable manner" in carrying out their services and setting up their rules and regulations. People's Gas has failed to fulfill this duty by misrepresenting what customers must do to avoid a gas shut-off and by failing to set up a payment arrearage program after publicly committing to do so.



In addition, the Respondent has a duty under 83 Ill. Adm. Code §280.110(e) to “explain the rules concerning deferred payment arrangements surrounding a gas shut-off.” It is true that the Respondent has sent inserts to gas customers facing shut-offs, but the problem is that these inserts are inconsistent with remarks that the Respondent has made to the public, in the media, and to individual gas customers. As a result, the Respondent has failed to adequately “explain the rules” regarding service terminations and how to avoid such terminations through deferred payment agreements. 83 Ill. Adm. Code §280.110(e). These misrepresentations and contradictions are not a “just and reasonable” way to conduct business with the public. 220 ILCS 5/8-101.

Furthermore, Respondent claims that it has complied with 83. Ill. Adm. Code 280.130(a)(2) and 280.130(a)(1)(b) by sending out a disconnection notice to gas customers who are overdue on their bills. Motion to Dismiss, p. 7. It is true that the Respondent has sent out such notices. However, the Respondent, on March 27, 2001, under heavy public pressure, also made a public commitment to gas customers that a payment arrearage program would be created. Section 280.130(a)(1)(b) allows the utility to disconnect service for customers with past due bills unless, at the option of the utility, they enter into a deferred payment agreement. In order to disconnect, they must send a notice in compliance with Section 280.130(a)(2). These two passages read together under the umbrella of the utility’s larger statutory duty to provide services in a “just and reasonable manner” demands that utilities maintain a minimum level of accountability to the public and consumers. A utility which has made a voluntary public commitment to create an Arrearage Program in response to public pressure about customers facing terminations of service, but refuses to provide customers with an opportunity to enroll in

such a program before facing the threat or reality of a service termination, does not meet this minimum level of accountability. Without this opportunity, the utility has failed to give customers any semblance of fair notice about how to avoid a gas shut-off after the utility, at its own option, has made a public commitment to creating such a program. By failing to provide gas customers with notice and opportunity of how to get into the publicly-committed arrearage program before having their service terminated, they have acted in a manner that is not just or reasonable.

B. ACORN's Proposed Remedy Does Not Violate the Act

With this Response to Respondent's Motion to Dismiss, ACORN submits an Amended Complaint that narrows the scope of the requested remedy to all ACORN members who are residential gas customers of People's Gas. In addition, the remedy is amended to provide that gas cut-offs should continue for reasons such as a customer complaint, unsafe or dangerous condition or theft and tampering. These changes are made in the interest of clarity and to address the Respondent's cited concerns in its Motion to Dismiss. Motion to Dismiss, pp. 7-8. It was not anticipated by ACORN that the Commission or People's Gas would interpret the relief requested, based on the complaint, to include a cease and desist order for any reason whatsoever. People's Gas recently wrote in a letter to ACORN President Denise Dixon, dated May 31, 2001, that they were "extending the shut-off date" for specific customers (Attached as Appendix D). Certainly, they didn't mean by that statement that they wouldn't shut-off gas service to those "specific customers" if there were safety issues or if those "specific customers" requested it.

ACORN's complaint is specifically about the troubles faced by residential gas customers, specifically ACORN residential gas customers, who are having difficulty paying their bills and wish to enter into the CARE arrearage payment program and take the correct steps to avoid a service termination. ACORN seeks a remedy on behalf of its members who are residential gas customers and a cease and desist order only for gas shut-offs that are the result of past due payments.

However, ACORN's remedy is consistent with the Act in that it requests the Commission to bar People's Gas from shutting off service due to violations of the Public Utilities Act, 220 ILCS 5/8-101 and the Illinois Commerce Commission rules. 83 Ill. Adm. Code §280.110e, 280.130(a)(1)b, and 280.130(a)(2). These substantive violations have been alleged in ACORN's first and second Amended Complaints and have been reiterated above. By failing to adequately and clearly explain the rules concerning a gas shut-off and deferred payment agreement and by making a public commitment to create a CARE arrearage program and then failing to create it despite continuing efforts to threaten and/or shut off gas service to indebted customers, the Respondent has violated its public and legal responsibilities. If the facts as alleged in ACORN's complaint can be proven as true, then People's Gas has violated the Public Utilities Act and the ICC rules. As a result, this complaint should not be dismissed.

### III. CONCLUSION

ACORN has demonstrated that the Respondent's Motion to Dismiss fails to provide an adequate basis for this Commission to dismiss ACORN's complaint. The five asserted procedural defects claimed in the Respondent's motion do not exist, can be corrected, or represent an inadequate basis for dismissal. Substantively, there are

sufficient facts in this complaint to constitute a possible violation of the Public Utilities Act and the ICC rules. ACORN is a community group bringing forth a serious complaint with allegations that, if proven to be true in an evidentiary hearing, will continue to have major ramifications for both individual consumers and the public at large. The Respondent has failed to show that a complaint of this importance and substance should be dismissed. ACORN requests that the Commission deny the motion to dismiss and allow this complaint to continue to an evidentiary hearing for a full examination of whether such violations have occurred.

Respectfully Submitted,

ACORN

By:

A handwritten signature in cursive script, reading "Nicholas J. Brunick", is written over a horizontal line.

Nicholas J. Brunick  
Attorney for Chicago ACORN  
25 E. Washington, Suite 1515  
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**VERIFICATION**

Madeline Talbott, being first duly sworn, states that she is the Head Organizer of Illinois ACORN and that the contents of this document are true to the best of her knowledge, information, and belief.

Madeline Talbott

Madeline Talbott  
Illinois ACORN  
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Telephone: (312) 939-7488

Signed and sworn to before me  
This 17th day of June 2001.

Beverly Minnich  
Notary Public



**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

ACORN (Association of Community Organizations  
for Reform Now)

vs.

Peoples Gas, Light, and Coke Company

Complaints regarding service of termination

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**Docket No. 01-0317**

**NOTICE OF FILING**

TO: SEE ATTACHED SERVICE LIST

YOU ARE HEREBY NOTIFIED that I have on this 12th day of June, 2001, forwarded to the Chief Clerk of the Illinois Commerce Commission, 527 East Capitol Avenue, P.O. Box 19280, Springfield, Illinois 62794-9280, by overnight, first class mail, for filing in the above docket, Complainant's Response to Respondent's Motion to Dismiss and Complainant's Motion for Leave to Amend Its Complaint with Amended Complaint, filed by ACORN, copies of which are hereby served upon you.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of the foregoing Notice, together with the documents referred to therein, were served upon the parties on the attached Service List, by first class mail or delivery, proper postage prepaid, from Chicago, Illinois on this 13<sup>th</sup> day of June, 2001.



Nicholas J. Brunick  
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Chicago, IL 60602  
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Signed and sworn to before me  
This 12<sup>th</sup> day of May 2001



Notary Public



**SERVICE LIST**  
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